

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH**

MONDAY, THE 10TH DAY OF AUGUST 2015/19TH SRAVANA, 1937

MACA.No. 401 of 2012 ()

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AGAINST THE AWARD IN OPMV 601/2011 of M.A.C.T.,KOZHIKODE
DATED 20.12.2011
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APPELLANT(S)/APPELLANT/3RD RESPONDENT:

**RELIANCE GENERAL INSURANCE CO.LTD.
KOZHIKODE, REPRESENTED BY ITS DEPUTY MANAGER
REGIONAL OFFICE, ERNAKULAM.**

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENT(S)/CLAIMANTS:

- 1. GOPI
S/O.RAGHAVAN, AGED 46 YEARS, NOORAKKATTU HOUSE
MUTHAPPANPUZHA, ANAKKAMPOYIL, KOZHIKODE
PIN-673001.**
- 2. SUSHEELA,
W/O.GOPI, NOORAKKATTU HOUSE, MUTHAPPANPUZHA
ANAKKAMPOYIL, KOZHIKODE, PIN-673001.**
- 3. SANDEEP GOPI,
S/O.GOPI, AGED 18 YEARS, NOORAKKATTU HOUSE
MUTHAPPANPUZHA, ANAKKAMPOYIL, KOZHIKODE
PIN-673001.**

R1,R2 BY ADV. SRI.R.BINDU (SASTHAMANGALAM)

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 10-08-2015, ALONG WITH MACA. 863/2012, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**

VS

**T.R.RAMACHANDRAN NAIR, &
K.P.JYOTHINDRANATH, JJ.**

M.A.C.A.Nos.401 & 863 of 2012

Dated this the 10th day of August, 2015

JUDGMENT

K.P.Jyothindranath, J.

Both appeals arose from the same award.

2. M.A.C.A.No.401/2012 is an appeal filed by the Insurance company wherein, M.A.C.A.No.863/2012 is an appeal preferred by the claimants in O.P.(MV) No.601/2011 on the files of the Motor Accidents Claims Tribunal, Kozhikode. Both appellants are challenging the quantum of compensation awarded by the Tribunal.

2. The facts in a nutshell are as follows; On 08.10.2010, a motor vehicle accident occurred on Thiruvampady-Koodaranhi road. The vehicles involved in the accident are a motor bike bearing registration No.KL-10-Q-6540 and a lorry bearing registration No.KL-11-E-6507. In that accident one Sabin Gopi, who was the rider of the motor bike, sustained fatal injuries and succumbed to the injuries. The parents and brother of the deceased

filed a claim petition before the Tribunal, claiming a total compensation of Rs.8,10,000/-. The respondents therein are owner, driver and the Insurance company of the lorry involved in the accident. The Tribunal awarded a total compensation of Rs.4,68,500/-. Both the appellants, aggrieved by the said award, filed these appeals.

3. When the appeals came up for hearing, the learned counsel for the appellant in M.A.C.A.No.863/2012 submitted before us that the deceased was only aged 19 years at the time of accident. He was working as an agent of Malayala Manorama publications as well as he was working in an electrical shop. It is the further submission that the distribution of newspaper is in the early hours of the day and thereafter, he will be free. It can be seen that he was utilizing the spare time also and was earning more. He was an industrious boy. The Deputy General Manager of Malayala Manorama publication was examined as PW2 before the court below and proved Exts.A2 and A3 documents. As per the documents, it can be seen that the income of the

deceased in the month of September 2010 was Rs.6,547/-. Apart from the said income, he was also having a daily income of Rs.150/- from working in the electrical shop. Even though, all these evidences were adduced, the Tribunal only took a monthly income of Rs.4,000/- for calculation purpose and it is the further submission that the future prospects of the deceased was also not taken into consideration by the Tribunal. The amount awarded on various heads like funeral expenses, loss of estate and loss of love and affection are also on a lower side.

4. The learned counsel for the Insurance company submitted before us that in this case, the deceased became an agent of the Malayala Manorama only for about two months prior to the accident. There is nothing to show that it was a permanent source of income. Apart from that there is no documentary evidence to substantiate the claim of the claimants to the effect that the deceased was working in an electrical shop. Surely the Tribunal took the multiplier of 8. The learned counsel fairly conceded that after **Sarala Verma**

v. Delhi Transport Co-operation [2010 (2) KLT 802 (SC)] case, the multiplier applicable will be 18.

5. In this case, the Tribunal awarded only a total compensation of Rs.4,68,500/- to the deceased, who was only aged 19 years. From the evidence on record, it can be seen that he was a young man, who was working very hard to earn. There is nothing to disbelieve the evidence of PW2, who is representing a very renowned publication in Kerala. As per his evidence, the deceased was having an income of more than Rs.6,000/-. As rightly pointed out by the learned counsel for the Insurance company that there will be incidental expenses in a case of distribution of periodicals and a marginal deduction from the amount received as commission will be necessary. Thus, considering all aspects, it will be only just and proper to adopt a monthly income of Rs.5,000/- for calculation purpose.

6. Thus, the loss of dependency can be calculated by adopting Rs.5,000/- and the amount available on this head will be Rs.5,40,000/-. Apart from

this, a sum of Rs.1,00,000 is awarded towards loss of love and affection. The claimants/appellants are also entitled for a sum of Rs.10,000/- towards pain and suffering of the deceased. A sum of Rs.30,000/- is awarded towards loss of estate. A sum of Rs.25,000/- towards funeral expenses a sum of Rs.500/- awarded towards damage to clothing and articles and another sum of Rs.1,000/- towards the transportation expenses. Thus the appellants in M.A.C.A.No.863/2012 is entitled for a total compensation of Rs.7,06,500/- (Rupees seven lakhs six thousand and five hundred).

7. Accordingly, the total just compensation is tabulated as follows:

Head of Claim	Amount awarded in Rupees
(a)Transportation to Hospital	Rs.1,000/-
(b) Damage to clothings and articles	Rs.500/-
(c) Funeral Expenses	Rs.25,000/-
(d) Loss of estate	Rs.30,000/-
(e) Pain and sufferings to the victim	Rs.10,000/-
(f) Loss of love and affection	Rs.1,00,000/-
(g) Loss of dependency (5000x12x18x1/2)	Rs.5,40,000/-

Head of Claim	Amount awarded in Rupees
Total	Rs.7,06,500/- (Rupees seven lakhs six thousand and five hundred)

8. The above enhanced compensation will bear 9% interest from the date of petition. Insurance company who is the appellant in M.A.C.A.No.401/2012 shall deposit the amount within three months of this order. The enhanced compensation shall be apportioned as follows :- A sum of Rs.35,000/- with interest is entitled to the third appellant, who is the brother of the deceased. The balance amount with interest shall be shared equally in between the appellant Nos.1 and 2.

In the light of the above findings, M.A.C.A.No.863/2012 is allowed and M.A.C.A.No.401/2012 is dismissed. Parties will bear their cost in the appeals.

Sd/-
T.R.RAMACHANDRAN NAIR,
JUDGE

Sd/-
K.P.JYOTHINDRANATH,
JUDGE

VS